

**REGULAR STATE BANKING BOARD MEETING
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

November 18, 2004

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:00 a.m., Thursday, November 18, 2004.

MEMBERS PRESENT: Timothy J. Karsky, Chairman
Ron Braseth, Member
Lorren Henke, Member
Launa Moldenhauer, Member
Roger Monson, Member

MEMBERS ABSENT: Bill Daniel, Member
Anita Quale, Member

ALSO PRESENT: Robert J. Entringer, Secretary
Scott Miller, Assistant Attorney General
Brad Sinclair, Serkland Law Firm
Jeff Jones, First Security Bank – West
Howard Torgerson, First Security Bank – West
Ken Hintz, First Security Bank – West
Dale Fehrenbalm, First Security Bank – West
Ernest Strube, United Bancor, Ltd.
Chuck Stroup, Union State Bank of Hazen
Boyd Anderson, CPA, Brady Martz
Harvey Huber, Union State Bank of Hazen
Rick J. Miller, Union State Bank of Hazen
Kathy Stroup Huber, Union State Bank of Hazen
Warren K. Olson, Union State Bank of Hazen

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on September 28, 2004, and the special meeting held of November 1, 2004. **It was moved by Member Braseth, seconded by Member Moldenhauer, and carried by a vote of 5 to 0, with Members Daniel and Quale absent, to approve the minutes as published.**

PROPOSED NEW NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 13-02-22 – DEPOSIT PRODUCTION OFFICES

Chairman Karsky indicated the State Banking Board had approved deposit production offices as an activity for state-chartered banks at its March 2004 meeting and began the rulemaking process to draft proposed rules regarding permissible activities at a deposit production office. After the publication, the State Banking Board held a hearing and received comment from Marilyn Foss, Counsel for the North Dakota Bankers Association; Don Forsberg, Executive Vice President of the Independent Community Banks of North Dakota; and Jim Goetz, Chairman and CEO of Security First Bank of North Dakota, New Salem. After the hearing the comment period extended until August 2004, during which time the Department received written comments from Jim Goetz, Chairman and CEO of Security First Bank of North Dakota, New Salem; James Jorgenson, Executive Vice President and Trust Officer of State Bank & Trust of Kenmare; Marilyn Foss, Counsel for the North Dakota Bankers Association; and Kent Ferguson, Executive Vice President of The Citizens State Bank at Mohall. The rules were on the agenda at the September 28, 2004, State Banking Board meeting; however, discussion was tabled. Chairman Karsky indicated all the comments received had some concern about the deposit production offices and the activity. Chairman Karsky continued that it is still the Department's contention that a national bank can do this; however, the need for this activity has diminished and there are no banks interested in this activity at the present time. Chairman Karsky stated it would be his recommendation to withdraw the proposed rules since there is no apparent need and there were some concerns and objections raised by the Associations, as well as several bankers.

Member Monson inquired as to what brought this issue about, whether a bank was inquiring as to the permissibility of this activity. Chairman Karsky indicated the Department has a request from a bank to place a deposit production

office in Nevada, and Nevada would not allow a deposit production office. Chairman Karsky stated he was ready and willing to approve it, realizing it was not going to create a very good working relationship with the Nevada Department of Financial Institutions. However, the bank that was interested is now pursuing a charter in the State of Nevada in order to establish an office in that area.

Chairman Karsky indicated since there is no real need at this point, he felt it was best to withdraw the proposed rules and, if need be, pursue them at a later time.

It was moved by Member Monson and seconded by Member Henke to withdraw the proposed rules for Deposit Production Offices. The motion carried by a vote of 5 to 0, with Members Daniel and Quale absent.

UNION STATE BANK OF HAZEN, HAZEN – APPLICATION TO ESTABLISH A FACILITY AT 504 WEST MAIN STREET, BEULAH

Chairman Karsky indicated the State Banking Board should have the application, and that he would like to review a letter the Department received on October 7, 2004, from Howard Torgerson, President of First Security Bank – West, Beulah. Chairman Karsky read the contents of the letter, indicating that the letter served as a request to be heard in regard to the above application, adding that Jeff Jones will be representing First Security Bank – West at the hearing. Chairman Karsky indicated he did contact Mr. Jones and discussed scheduling a hearing; however, during the conversation Mr. Jones indicated they did not want a formal hearing on the matter, but did want to appear before the State Banking Board to present information regarding the application. Chairman Karsky stated the Board will hear the information from the applicant and the protestant, but this is not a formal hearing. As such, there will not be cross examination, although the Board will be able to ask questions of both the applicant and the protestant.

Chairman Karsky indicated the format is: (1) the applicant will present its application; (2) the Protestants will follow with comments and exhibits; (3) the applicant will conclude with a final statement; and (4) the State Banking Board will have the opportunity to ask questions at the conclusion of the discussion, as well as during any of the presentations.

Chairman Karsky asked Assistant Attorney General Miller to review the criteria the Board must consider as to whether or not to approve this application. Assistant Attorney General Miller reviewed Section 6-03-13.3 of the North Dakota Century Code, stating the Board, in determining whether or not to approve the application for such facility, shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people in the community and area served.
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by approval of the application.

Chairman Karsky asked President Stroup to begin with his presentation.

President Stroup introduced those in attendance on behalf of Union State Bank of Hazen, and began by saying that he felt the application the Board had before it, along with the supporting documents, speak for themselves and demonstrate the condition under which they intend to go into Beulah. President Stroup indicated that in view of the fact that the Department has already recommended approval of the application, it is not his intent or Mr. Anderson's intent to go into great detail. President Stroup indicated the last time he came before this Board was in 1981 when the bank applied to establish a branch in Zap, and indicated that branch is now located in the café/grocery store in Zap, and is working out just fine. President Stroup indicated in those days the applicant had to demonstrate support from the community as well as profitability, and had to demonstrate that the location was not going to harm any other competing banks. President Stroup recalled that Harvey Huber had chartered a bus to arrange for people to come from the community of Zap to attend the hearing and support the branch. President Stroup indicated changes have taken place and one came from the customer, that being an expectation of convenience. President Stroup indicated our population is aging and added that the distance that the customer has to drive is a measure of that convenience. President Stroup indicated that Hazen is 11 miles from Beulah and he suspected if a resident of Fargo had to travel 22 miles round trip to do his/her banking with a particular institution, they would opt not to bank with that institution. President Stroup indicated people want to go do their banking on the way to the grocery store or post office, or people like to do their banking on the internet or telephone, or by mail. President Stroup discussed a recent survey of

their customers which indicated to a high degree the reason their customers bank with them is their location in Hazen. President Stroup indicated the application indicates they intend to serve their customers in the Beulah area; however, if they become an appealing alternative to individuals that have accounts with non-banks or banks in town, they would be welcomed.

Boyd Anderson, Brady Martz, indicated he would like to review what his firm did in the development of the projected financial data. Mr. Anderson indicated the projections were based on actual data over a four-year period from the bank, indicating they started with the current customer base the bank has in Beulah, Zap, Dodge, and Golden Valley, which includes 182 loan customers for loans totaling over \$6.5 million, and 552 deposit accounts with \$6,124,000 in deposits. Mr. Anderson indicated historical information was used for the deposit growth rates, interest rates for both loans and deposits, occupancy expenses, operating expenses, and they developed historical loan loss trends which include the current 182 loan customers in the Beulah area. The salary and benefit information was based on the seven full-time equivalent employees that are expected to be employed at the facility and the only figure that is not based on historical data was the growth of the facility because it was felt there would be some small additional growth due to the shopping that people do when a new institution comes into the community. Mr. Anderson indicated they expect that growth to be 7 to 10% in the first year, 3 to 5% in the second year, and inconsequential after that point. Mr. Anderson concluded by saying that given the financial data and projections, Union State Bank of Hazen does have and will continue to have a strong capital base.

President Stroup indicated that concludes their presentation and they would be happy to answer questions.

Chairman Karsky indicated for the record that Chief Examiner – Banks Jungman had prepared a Memorandum for the Board, which was included with the application.

Chairman Karsky recognized Brad Sinclair, with the Serkland Law Firm, Fargo.

Assistant Attorney General Miller noted that on the Affidavit of Service by Mail for the materials that were provided to the Board by the protestant, the applicant was not included on the list. Assistant Attorney General Miller asked if

this information was sent to the applicant, and Mr. Serkland indicated due to the short timeframe prior to this meeting at which he was hired to represent the bank and in conversations with Chairman Karsky, he was told if the materials were Federal Expressed by Thursday to Chairman Karsky, he would make sure the applicant did receive a copy of the materials. Chairman Karsky confirmed with President Stroup that the materials had been received by them on Saturday.

Mr. Sinclair stated for the record the information and the exhibits that were provided all came from the internet, as well as one source of information from a phone conversation from the post office because the post office does not have a zip code map to determine how many people are served by the Beulah zip code, and the other information obtained was the number of building permits issued for the last three years because that is not published on a website. Mr. Sinclair indicated everything else was obtained from the website, including the City of Beulah website, Mercer County website, and all the banks that they cited in the information comes from websites. Mr. Sinclair indicated it is their contention that the Board can take notice of this information since it all comes from generally-available websites and general information.

Mr. Sinclair introduced those individuals with him from the bank, and provided additional handouts for the Board to review.

Mr. Sinclair stated as the Board is aware, there are three issues to examine in considering this application, adding that he was not going to talk about the financial strength of Union State Bank of Hazen, as it was not an issue. The two issues the Board needs to examine are the convenience, needs, and welfare, and the serious injury to other banks. Mr. Sinclair indicated the case law cited in the brief provides that there are numerous factors in looking at the need which include: what are the existing banks in the area; the population, commercial and development of the area; potential growth of the area; what are the current services offered by the existing banks; what are the services that the applicant proposes; and whether or not those services are presently met by existing banks. Mr. Sinclair indicated the law also requires you to examine the future as well as the economics of the area and industry. Mr. Sinclair referred to the first exhibit which shows a graph of the banks and credit unions per person for Beulah, North Dakota. Mr. Sinclair indicated he felt that was the most shocking and alarming statistic before the Board, as the graph shows there is one bank and credit union per 1,400 population in the State of North Dakota, adding that Bismarck is one bank and credit union per 2,683 residents, Fargo has one bank and credit union for every 1,726 residents, and

Beulah has one bank and credit union for every 768 residents. Mr. Sinclair stated that Beulah is approximately two times over-banked compared to the state average, two and one-half times compared to Fargo, and almost three and one-half times over-banked compared to Bismarck. Mr. Sinclair pointed out as stated in the information provided, Bismarck and Fargo are growing. Mr. Sinclair stated from the evidence provided to the Board, Beulah has a tough economic future as it is suffering from decreased population, decreased school enrollment, and a decreased employment. Mr. Sinclair further stated Beulah has one of the higher rates of unemployment in the state and has decreasing employers. Mr. Sinclair referred to his second graph which shows that North Dakota has one bank for every 1,500 residents; looking at Bismarck it is one bank for every 3,130 residents; Fargo has one bank for every 2,231 residents; and Beulah has one bank for every 1,024 residents. Mr. Sinclair continued that just looking at banks alone, Mercer County is more than two times over-banked compared to Fargo, more than three times over-banked compared to Bismarck, and more than one and one-half times over the state average. Mr. Sinclair referred to his third chart which shows that the population of Mercer County peaked in 1990; decreased 11% from 1990 to 2005, and is projected to go down 11% from 2005 through 2020. Mr. Sinclair stated that the population of Beulah has gone down 3 to 4% since 1990. Mr. Sinclair continued with the projections for Mercer County, adding that there is no study or projection as to what is anticipated for future population in Beulah. Mr. Sinclair referred to his chart which shows that school enrollment from 1999 through 2009 will go down 44%, and stated they feel the declining projected school enrollment demonstrates that the population of Beulah will also be decreasing. Mr. Sinclair referred to his graph which shows the unemployment rates for Mercer County are 2.5% higher than the state average, and has been anywhere from 2.5 to as high as 5% higher than the state average. Mr. Sinclair pointed out that there has been a decline of one to two businesses per year, and there has been a decline of approximately eight businesses over the last six years. Mr. Sinclair referred to his next chart showing the number of building permits issued for the city of Beulah, adding that 2002 and 2003 were boom years across the United States since World War II, and interest rates are at the lowest; however, Beulah has been flat showing stagnant growth for building permits, which includes new construction and remodeling. Mr. Sinclair indicated in his brief and the documents he provided to the Board he shows the 1980 average price of a house in Mercer County was equal to the average price of a house across the United States. Also in 1980 the average price of a house in Mercer County was greater than the average price of a house across the State of North Dakota. In the year 2000, the average price of a house in Mercer County is less than the average price of house in the State of North Dakota.

Mercer County housing values have gone down, while housing values across the State of North Dakota have gone up. Mr. Sinclair pointed out that the housing vacancy rate in Mercer County is 24%, showing there is not a need for housing in Mercer County, the number of housing units in Mercer County has gone down from 1990 to the present, and there is still a high vacancy rate. Mr. Sinclair referred to the banking community in Beulah and pointed out his chart shows total loans have been increasing slowly, part of which can be associated with the fact that after 9/11 people got out of the stock market and started depositing money in the bank. Mr. Sinclair indicated the loan growth has gone up just slightly, which shows there is not a significant need for loans in Beulah. Mr. Sinclair referred to his chart which shows after 9/11 deposits did increase slightly; however, deposits are now flat or stagnant, which shows large sums of money are not being invested in the community of Beulah.

Chairman Karsky asked Mr. Sinclair if his charts referred to Hazen, Beulah, or Mercer County, and Mr. Sinclair indicated they refer to the banks in Beulah. Mr. Jones corrected Mr. Sinclair by stating the three banks referred to on the charts are the banks in Mercer County.

Mr. Sinclair indicated the total assets for the three banks in Mercer County have been stagnant or slow growth. Mr. Sinclair referred to his final chart which shows the ratio of net income as a percentage of average assets has gone down for two of the banks in Mercer County, which is attributable to the lower interest rate; the third bank in Mercer County has had slow growth. Mr. Sinclair stated this is not an area that has unmet needs.

Mr. Sinclair referred to the brief that had been filed which shows the existing banks offer the following services: ATM, drive-up facilities, and banks open on Saturdays; which indicates all needs of the community are being met.

Mr. Sinclair stated what has been heard today is there is an emphasis on convenience and vision. In reference to convenience, Mr. Sinclair indicated his brief shows that 6% of the total loan customers of Union State Bank of Hazen have a Beulah address; 5% of the deposits of Union State Bank of Hazen are from residents with a Beulah address. Mr. Sinclair questioned whether that was enough to demonstrate a need for the convenience of these existing customers in Beulah. Mr. Sinclair stated internet banking, automatic withdrawal, and the convenience of writing checks and putting them in the mail are all available services. Mr. Sinclair pointed out that the application does not address the actual number of loan

customers that come to the bank to make payments; and because of the convenience of direct deposit, fewer customers drive to the bank to make deposits. Mr. Sinclair stated that tax refunds, social security checks, and wages can be deposited automatically, showing that the need for depository services has decreased.

Mr. Sinclair pointed out there are no statements that the current banks in Beulah are not meeting the needs of that community. Mr. Sinclair pointed out that his brief provides that U.S. Bank located in Beulah could virtually make unlimited amounts of loans to Beulah residents, and that First Security Bank – West could make up to \$80 million in loans in Beulah, if such a need exists.

Mr. Sinclair continued that the Board needs to consider the issue of serious injury. He indicated with the population decreasing, the high vacancy rate, and projections as to the future all indicate the economic welfare and benefit of the existing bank will be in jeopardy if an additional bank application is approved. Mr. Sinclair stated if this application is approved there will be four banks for the population of approximately 3,000, or one bank per 800 residents, which is almost two times the state average.

Mr. Sinclair quoted the mission statement of the Department of Financial Institutions which is to maintain public confidence in North Dakota financial institutions by insuring the financial industry operates in a safe and sound manner while complying with applicable rules and laws. Mr. Sinclair indicated by complying with applicable rules and laws, and considering the factors of convenience, need, welfare, and injury, shows that the community cannot support another bank without serious injury to the existing bank.

Mr. Sinclair stated he requests and recommends that the Board deny the facility application of Union State Bank of Hazen.

Mr. Sinclair provided the Board with a copy of a page of the application showing the cost to operate a bank. Mr. Sinclair stated that three banks sought applications for a location in Rapid City, and the average projected loss was \$379,000 for the first year and \$180,000 for the second year. Mr. Sinclair indicated he believes this demonstrates projected loss will be greater than that projected by Union State Bank of Hazen.

Member Monson stated it appears we have conflicting information with respect to numbers as far as population. Member Monson referred to page 7 of Mr. Sinclair's brief and the first paragraph of Chief Examiner – Banks Jungman's Memorandum, which indicates the FDIC State Profile for the fall of 2004 shows that Mercer County has a growing population. Chairman Karsky indicated the information included in Chief Examiner – Banks Jungman's Memorandum is from the FDIC State Profile and Mr. Sinclair's information was obtained from the website. Chairman Karsky explained the FDIC State Profile contains information from the 1970 census to the 2000 census, which does show an increase in population for Mercer County, whereas Mr. Sinclair's information goes from the 2000 census through 2003 and does show a declining population. Mr. Sinclair continued that the information on Exhibit F goes from the 1920 census through 2003, and shows a drop from 1990 to 2000 by approximately 1,200 residents. Mr. Sinclair indicated on line 16 of the next page shows Beulah's population has declined from 1990 to 2000 by over 200 residents, which is 6.27%.

Chairman Karsky asked President Stroup if he felt the population of Beulah was growing, declining, or staying the same. President Stroup indicated he feels it is showing a decline; however, the losses will be fairly nominal compared to the past.

Chairman Karsky referred to the information Mr. Sinclair provided regarding the Rapid City applications, and asked if the cost of constructing a building in Rapid City versus Hazen would be much more expensive than constructing a building in Beulah. Mr. Sinclair indicated he is suggesting that the bank's projected loss of \$2,600 is going to be greater, adding when you take into consideration startup costs and a transfer of deposits for either Zap or Hazen. Mr. Sinclair stated he used those applications simply for illustrative purposes in that it does cost a lot of money to start up a new facility. Mr. Sinclair stated he did not think this Board had information with regard to VISIONBank, but he did know that after one year VISIONBank in fact had a profit due to the fact that they had a preexisting loan officer that left one bank and took many customers with, which is a different situation than this application.

Member Braseth asked what the Tier 1 and 2 capital ratios of First Security Bank – West are. Mr. Jones indicated Tier 1 risk-based was over 15%.

Chairman Karsky asked President Stroup if he would like to make concluding comments. President Stroup indicated he would like to respond to the

optimism or pessimism of Beulah and Mercer County. President Stroup indicated they are aware of the declining population forecast for that area in the coming years; however, Mercer County has the second highest per capita income in the State. Therefore, the population of Mercer County may be stagnant but there is continued growth in wealth. President Stroup continued that the coal mining in Mercer County has resulted in the creation of old wealth money, with the severance and income taxes on mineral rights, and payments to the farmers have also made North Dakota a wealthy State, as well as the wages being the second highest per capita in the State. President Stroup indicated there is optimism there, and felt the bank was positioned for growth and economic growth in the years ahead. President Stroup indicated the gas plant is doing very well, especially since they do not have an obligation to pay the Department of Energy. President Stroup indicated he has felt over the past 10 years that Mercer County will benefit from individuals who came to this area, have stayed for over 20 years, and want to remain here. President Stroup stated he refutes the idea that you look at the past to forecast the future, adding that there are factors in Mercer County that will change that situation. President Stroup indicated Peter Froehlich from the Great Plains Population Symposium in Dickinson came to Hazen and talked about population trends and stated coal country is one of the few areas in the state, outside of the four metropolitan areas, with a good opportunity for economic growth. President Stroup indicated the energy industry has an optimistic future, and currently applications for the construction of power plant are being processed. President Stroup quoted from page 12 of Mr. Sinclair's brief which states "Mercer County and the City of Beulah are currently suffering from increased unemployment, a decrease in employment opportunities, flat real estate markets during an expansive market, and no prospects of increased prosperity/employment in the near future", and stated he would argue this view is wrong. President Stroup stated if we are to be a progressive bank it is essential to be optimistic and strive to make the necessary changes to stimulate economic opportunity in our state. President Stroup indicated he feels Beulah is a community worth making an investment in, and having been a Mercer County resident his entire life he feels he has a better sense there is great opportunity in the area.

Mr. Anderson provided the Board with information with regard to First Security Bank – West, Beulah; Union State Bank of Hazen; and The Union Bank, Beulah, that covers the period of December 1998 through June 2004. Mr. Anderson indicated in this time period the total assets for First Security Bank – West went from \$45 million to \$69 million, and The Union Bank went from \$26 million to \$37 million. Mr. Anderson indicated total deposits for First Security

Bank – West in December 1998 were \$40,678,000 and increased to \$56,630,000 in June 2004, and the deposits for The Union Bank in December 1998 were \$24 million and increased to \$32 million in June 2004. Mr. Anderson stated the equity capital for First Security Bank – West was \$4,278,000 in December 1998 and increased to \$7,424,000 in June 2004, and the equity capital for The Union Bank has increased from \$2.2 million to \$3.2 million over the same time period. Mr. Anderson indicated it does not appear that times are as depressed as indicated by the Protestants.

The Board was also provided with a page from the UBPR for the First American Bank in Madison, South Dakota, and Mr. Anderson indicated he wanted to point out what this bank did during the period of time it started operating the facility in Rapid City, South Dakota. Mr. Anderson pointed out the bank's average assets were \$117 million in 2002, increased to \$132 million in 2003, and increased to \$144 million in mid-2004. Also the net income increased from \$1.4 million in 2002 to \$2.5 million in 2003, and as of mid-2004 was approximately \$1.6 million.

Mr. Anderson also indicated he felt it was difficult to conclude that operating losses for establishing a new facility or injury to other banks in the region would be greater than the applicant had projected. Mr. Anderson indicated he believes the major reason there is not larger loss is because of their current customer base in Beulah.

President Stroup added that Rick Miller, the proposed manager for the facility in Beulah, sits on the Beulah Chamber of Commerce and has indicated that Westmoreland, a company that mines the area south of Beulah, has done some forecasting of turnover which shows that turnover will stabilize in the Beulah population. President Stroup stated that the housing values that Mr. Sinclair provided went through the year 2000; however, Union State Bank of Hazen's loan committee has seen housing values which are beginning to rise since the year 2000.

Jeff Jones asked for permission to address the Board, and indicated he did want to point out that in January 2002 First Security Bank – West merged a bank charter in Fairview, Montana, into the Beulah charter and established an interstate branch. Mr. Jones indicated that was an approximate \$13 million transaction, with loans increasing approximately \$10 million, deposits increasing approximately \$13 million, and equity capital increasing approximately \$1.4 million. Mr. Jones indicated because of that the growth indicated in Mr. Anderson's numbers is not

necessarily all in Beulah. Mr. Jones stated he would assert none of this growth was from Beulah.

Mr. Sinclair pointed out that the application of First American Bank in South Dakota to establish a branch in Rapid City was denied; therefore, the reference to the increases in assets and earnings for the bank do not reflect an expansion into Rapid City. Mr. Sinclair also pointed out that the other two applications that were provided to the Board were approved, but the first application for First American Bank in Madison was denied.

Chairman Karsky referred to whether or not other banks will be seriously injured by approval of this application, and stated that the applicant indicated the current trade area of the bank includes the trade area of the proposed Beulah facility, adding that the bank has a relatively large customer base living and/or working in Beulah and the surrounding area, and concluding that approval of this application for the proposed facility will help the bank better serve its existing customers. The applicant states the additional business activity that may be generated from the proposed facility in Beulah will not be significant and should not seriously injure other banks within the trade area.

Chairman Karsky asked President Stroup if he had any experience with any other banks coming into the Hazen community and whether or not that has seriously injured his bank. President Stroup indicated that The Union Bank, Beulah, has received approval to establish a facility in Hazen; however, since the facility has not yet opened he could not answer the question as to whether or not it will cause serious injury. Chairman Karsky asked President Stroup if he anticipates serious injury after this facility opens, and President Stroup indicated he did not feel there would be any serious injury.

Chairman Karsky asked if The Union Bank, Beulah, wants to open the facility in Hazen because it currently has customers in that community, and President Stroup indicated that was correct.

Chairman Karsky asked President Stroup how many employees would be at the proposed facility, and President Stroup indicated there would be a representative from the Investment Centers of America, a representative from the bank's insurance agency, a personal banker, a teller, and an operations person. Chairman Karsky asked if those would be new jobs for the community, and President Stroup indicated five would be new positions.

Chairman Karsky asked how the existing customers were determined and President Stroup indicated it was determined by zip code. President Stroup added that they do have customers that have an address in Beulah, but do not have a Beulah zip code and those numbers are not included. President Stroup continued that their commercial loan officer indicated they have approximately \$2 million of loans that have a Beulah location but do not have a Beulah zip code, and that number is not included.

Chairman Karsky asked what the anticipated timeframe for opening would be if this application is approved. President Stroup indicated the facility would open in mid to late summer 2005.

Harvey Huber asked for the opportunity to speak, and indicated he lived a good part of his life in the Mercer County area. Mr. Huber indicated he had the opportunity to relocate to Jamestown to become President of Stutsman County State Bank and stated that Mercer County has the second highest per capita income in the state and Stutsman County has the lowest per capita income in the state. Mr. Huber indicated the wealth of the Mercer County area will grow significantly faster than the rest of the state because of the impact from the power plants.

Mr. Sinclair stated the materials he provided shows the population declining and, instead of the number of people employed increasing, the unemployment rate in Mercer County has in fact gone up. Mr. Sinclair indicated this tells us although population is declining, there are more people in Mercer County that did not have to work that are now seeking jobs to try to support their families. Despite the population decreasing and the number of people working increasing, as well as the number of people looking for work increasing, the unemployment is still high which demonstrates that it takes two people to support a household instead of one. Mr. Sinclair indicated that is not the economic boom that a per capita analysis would indicate. Mr. Sinclair indicated the per capita analysis indicates that the people who are employed work at the mine making good salaries, but when considering individuals in other jobs it demonstrates this is not the economic oasis. He stated the documents demonstrate the population is decreasing and aging, older people need less banking services, banks are going to have to work harder to try to stay afloat, and it would be erroneous for the Board to approve the application.

Chairman Karsky indicated we heard from the applicant as well as the protestant, and it is the Board's duty to look at the criteria that Assistant Attorney

General Miller previously reviewed. Chairman Karsky indicated an option before the Board would be to order a hearing; however, much of the same information may be presented. Chairman Karsky stated another option is that the Board can deliberate and then make a decision today.

Chairman Karsky indicated one item that should be noted is that the applicants did not get a great deal of time to review the information that Mr. Sinclair sent out, so if the Board felt the applicant should have additional time to respond via a brief or correspondence, that was another option.

Chairman Karsky asked the Board members if they were prepared to make a decision at this time, and the Board concurred they were.

Chairman Karsky began by discussing his thoughts with regard to the criteria and indicated the Department, in its Memorandum from Chief Examiner – Banks Jungman, did not have concerns with regard to the financial strength of the bank, and in fact both parties acknowledged today that they were not addressing that criterion.

Chairman Karsky indicated he did not feel management of the proposed facility would be a problem and had no concerns in that area.

Chairman Karsky asked if any members of the Board had any concerns with respect to the financial strength of the bank or management of the proposed facility, and there were none.

Chairman Karsky indicated he would like to hear the Board's thoughts with regard to the first criterion of convenience, needs, and welfare of the people in the community and the area served.

Member Monson indicated based on the information provided by the applicant, it appears the applicant has a customer base in the proposed area now.

Member Henke concurred with Member Monson, and noted that he specifically asked whether the customer base they identified was using a Beulah zip code to which President Stroup indicated it was. Member Henke added that one of the primary considerations when looking at branching throughout the United States is convenience and with that being considered he feels the applicant has a legitimate need to go into the Beulah community.

Member Moldenhauer indicated it is her feeling that competition is good, and if you ask any members of a community they would indicate any time you open a new facility in their community and employ new people they will support the new facility.

Member Braseth stated according to the projections and figures presented for deposits and loans he did not feel those figures were staggering, and did not feel they would represent a decline in the business that is being conducted with the existing bank. Member Braseth continued that by virtue of the fact that the protestant has a strong capital base and if they experienced a downturn in its business, it would not have a financial impact on the organization.

Member Henke continued that by applying the information that was presented this morning wherein Beulah has 768 residents per bank and credit union, in his situation in Wishek the ratio would even be greater. Member Henke indicated as far as potential harm he did not know whether it was that kind of issue in this particular situation.

Chairman Karsky stated one area the Board has struggled with in the past is the third criterion which deals with serious injury to other banks. He continued that the Board was presented much information with regard to Beulah and Mercer County, but did not see any facts as to how much business the protestants expected to lose if this facility is approved. Chairman Karsky stated when a new business comes to town someone may lose business, but the question is whether or not it will make another business unprofitable or cause the business to fail. He stated he did not feel any information was presented with regard to this issue.

Chairman Karsky indicated according to information provided by the applicant they do have a number of customers in the Beulah area and would provide a convenience for these customers. Chairman Karsky stated he believes convenience is a big factor, adding it is possible the new facility will take customers from competing banks in Beulah, but feels it will not be enough to seriously injure those competitors.

Chairman Karsky added he did not feel the criterion for serious injury had been met, as in the past the Board has been presented with sales tax numbers, with a drought the sales tax numbers can drop, and one a good year results for the farming economy you can see the sales tax numbers increase significantly;

therefore those numbers can be skewed somewhat. Chairman Karsky indicated the potential harm to the protesting bank was not demonstrated by declining capital numbers or loss of loans or deposits.

Member Monson stated that all three of the banks in the community at the present time including U.S. Bank are strong banks, and added that the marketplace will decide the growth and success of a business. Member Monson stated he did not see the economic injury demonstrated by the protestants.

Member Henke concurred that the market will dictate and some business decisions will win out in the end. Member Henke stated he would love to have some of the jobs from the Mercer County area in his trade area.

Member Moldenhauer stated she felt the protestant bank may experience some decline but that it will not be serious.

Chairman Karsky asked Assistant Attorney General Miller if the Board has adequately considered the criteria, and Assistant Attorney General Miller indicated the Board has discussed the three criteria and it is now time to make a decision.

The Board members indicated they were prepared to make a decision at this time.

It was moved by Member Henke to approve the application by Union State Bank of Hazen, Hazen, to establish a facility at 504 West Main Street, Beulah. The motion was seconded by Member Monson.

Chairman Karsky stated for the record he feels the applicant has met the three criteria.

The motion was carried by a vote of 5 to 0, with Members Daniel and Quale absent.

The Board adjourned at 10:25 a.m. and reconvened at 10:37 a.m.

The following individuals were added to the meeting by conference call: Fred Manuel, Roseau, MN; Kim Larson, Arthur; and Les Nesvig, LaMoure.

THE FIRST STATE BANK OF LAMOURE, LAMOURE – APPLICATION TO CLOSE ITS FACILITY LOCATED AT 304 MAIN STREET, DICKEY

Assistant Commissioner Entringer stated the Board had been provided a copy of Section 6-03-13.1 of the North Dakota Century Code, and referred the Board to the last two sentences which discuss discontinuance of a facility. Assistant Commissioner Entringer stated that notice of the proposed closing of the facility was published in the *LaMoure Chronicle* on September 15 and 22, 2004, and invited comments to the Board and also to Les Nesvig, President of The First State Bank of LaMoure. The written comments that had been received were provided to the Board. Assistant Commissioner Entringer indicated the Department had received some telephone calls regarding closure of the facility; however, those individuals did not provide written comments. Assistant Commissioner Entringer noted that President Nesvig had met with a group of citizens from the Dickey community and asked him to discuss the details of that meeting.

President Nesvig indicated he met with the Town Board as well as a community meeting which was held on October 12, 2004. President Nesvig explained at the community meeting where the bank was coming from as far as proposing to close the facility, and indicated that the citizens were understanding and were not terribly surprised by the decision to close the facility. President Nesvig indicated the only comment provided is requesting the facility be kept open one more year because the community would celebrate 100 years of banking in the Dickey community. President Nesvig indicated it was his sense after the meeting that the community understood the action being taken, and that the bank is holding an event for the community in December. President Nesvig indicated the reason for closing the facility is the low volume of activity and being able to justify the overhead costs based on that low volume of activity. President Nesvig indicated the facility is not in very good condition and security is certainly a factor.

Chairman Karsky indicated the criteria in the North Dakota Century Code are not really identified for the Board as far as what they need to consider in the decision process. He continued that the North Dakota Administrative Code simply discusses publication upon receipt of a completed application, but the law does not tell the Board what they need to consider when an application is received. Chairman Karsky stated he believes the bank has complied based on the criteria outlined in both the North Dakota Century Code and North Dakota Administrative Code.

President Nesvig indicated that the individual that works in Dickey also spends time working in the LaMoure office, as well as the Marion office, and she has indicated that she is surprised at the number of people from Dickey that come to either LaMoure or Marion to do their banking. President Nesvig indicated that Dickey is approximately 12 miles from Marion and 20 miles from LaMoure.

Assistant Commissioner Entringer noted that the FDIC has approved the branch closure effective December 31, 2004, and that the Department recommends approval of the application based on the factors outlined by President Nesvig as to the low volume of activity, the condition of the facility, and the security considerations.

It was moved by Member Monson, seconded by Member Moldenhauer, and carried by a vote of 5 to 0, with Members Daniel and Quale absent to approve the request by The First State Bank of LaMoure, LaMoure, to close its facility located at 305 Main Street, Dickey, effective December 31, 2004.

President Nesvig left the conference call at 10:48 a.m.

THE FIRST STATE BANK OF LAMOURE, LAMOURE, TO MERGE INTO FIRST STATE BANK OF NORTH DAKOTA, ARTHUR, AND APPLICATION BY FIRST STATE BANK OF NORTH DAKOTA, ARTHUR, TO ESTABLISH A FACILITY IN LAMOURE

Assistant Commissioner Entringer noted that the Department received the combined bank merger and facility application on October 4, 2004, and notice of the merger application was published in *The Forum* pursuant to the joint state and federal publication requirements found in the North Dakota Administrative Code on September 27, 2004, October 11, 2004, and October 25, 2004. The comment period expires 30 days after the date of first publication, which was October 27, 2004, and no comments were submitted. The facility application was published in the *LaMoure Chronicle* on October 20 and 27, 2004, and direct notice was also sent to banks within the trade area. The comment period for the facility application expired on November 10, 2004, and no comments had been received nor were there any requests for copies of the application.

Assistant Commissioner Entringer asked Fred Manuel to review the application with the Board.

Mr. Manuel referred the Board to Tab 1 of the application which notes that First Financial Corporation owns 100% of both banks and the thrust of the transaction is that the LaMoure charter will be merged into the First State Bank of North Dakota, Arthur, and included with the application is a modified facility application because the charter for the LaMoure bank disappears and a facility needs to be established in LaMoure. Mr. Manuel indicated the application is a FDIC Interagency Application which meets the criteria for the State Banking Board, and added that it is his understanding the FDIC will be issuing its approval letter later on this week. Mr. Manuel indicated the FDIC handles this more as a reorganization of affiliates and it has no affect on competition because before and after the transaction there is effectively no change.

Mr. Manuel referred the Board to Tab 2 of the application which is the financial information that includes a projected balance sheet for the date of the transaction, as well as one year in the future. Mr. Manuel referred to the capital ratios before the transaction noting that both banks are well capitalized before the transaction takes place, and on a combined basis the merged entity will still exceed the criteria for being categorized as well capitalized and the primary capital ratio per the State Banking Board guidelines is well over the 7% minimum at 8½%. The projection for one year in the future shows the bank continues to be well capitalized and continues to meet the primary capital guidelines for the State Banking Board.

Mr. Manuel referred the Board to the projections for combined income, which shows that the combined resultant bank has strong earnings as a result of the efficiencies gained by collapsing an additional charter.

Mr. Manuel referred the Board to Tab 3 of the application which shows that the Board of Directors of the resultant bank which is essentially the current Board of Directors of First State Bank of North Dakota. Tab 4 of the application is simply the affidavits of publication which was discussed by Assistant Commissioner Entringer. Tab 5 gives the most recent financial information for the applicant bank for the facility, as well as the two most recent yearend Call Report information. Tab 6 is the modified application for the facility.

President Larson indicated the bank holding company has a contract with Mr. Nesvig which expires on May 21, 2005, and the holding company has already appointed a Southwest Region President which will be Mr. Vince Watkins.

It was moved by Member Braseth and seconded by Member Moldenhauer to approve the application by The First State Bank of LaMoure, LaMoure, to merge into First State Bank of North Dakota, Arthur; the application by First State Bank of North Dakota, Arthur, to establish a facility at 100 First Ave SW, LaMoure, along with approval of the proposed Orders.

Chairman Karsky noted that the Department has recommended approval.

The motion carried by a vote of 5 to 0, with Members Daniel and Quale absent.

Fred Manuel and Kim Larson left the conference call at 11:00 a.m. The Board adjourned at 11:00 and reconvened at 11:08 a.m.

DIVIDEND REQUEST – SCANDIA AMERICAN BANK & TRUST, STANLEY

Assistant Commissioner Entringer provided the Board with copies of the request Scandia American Bank & Trust, Stanley, to declare a dividend up to amount necessary to reduce the bank's base capital to 8% of adjusted average total assets, which is being done in conjunction with the request for a change of control by United Bancor, Ltd., Dickinson, to acquire control of Scandia American Bancorporation, Inc., Stanley. The request indicates based on the most recent financial information available, the dividend needed to facilitate the change of control per the agreement would be \$8,655,000, and according to calculations that would reduce capital to 8% of average total assets.

Chairman Karsky asked Mr. Strube if that would be a sufficient dividend or if additional cushion is needed in case the calculations were not accurate.

It was moved by Member Henke and seconded by Member Moldenhauer to approve a dividend for Scandia American Bank & Trust, Stanley, not to exceed \$9 million. The motion was carried by a vote of 5 to 0, with Members Daniel and Quale absent.

**UNITED BANCOR, LTD., DICKINSON – APPLICATION TO ACQUIRE
AND MERGE SCANDIA AMERICAN BANCORPORATION, INC.,
STANLEY**

Assistant Commissioner Entringer reviewed his Memorandum, noting that the application was received on September 23, 2004, and additional information was requested on October 6, 2004. The additional information was received on October 18, 2004, and the application was deemed complete on October 21, 2004. The notice of the application was published pursuant to North Dakota Administrative Code Section 13-02-17-01 in the *Mountrail County Promoter* on October 27, 2004, with the comment period ending November 5, 2004. No comments have been received; however, two requests for copies of the application were received.

Assistant Commissioner Entringer reviewed the approval criteria found in Section 6-08-08.1(4), as well as highlights of the application proposal.

Mr. Strube highlighted the fact that Gary Nelson would remain with the bank for a period of at least three years and should he decide to remain after that time he would certainly be welcome to stay.

Member Moldenhauer asked what the distance is from Dickinson to Stanley, and Mr. Strube indicated it is approximately 120 miles. Mr. Strube indicated the reason they are looking at acquiring this institution is they felt the holding company had some excess capacity and the fact that the area fit nicely. Mr. Strube indicated it is not their plan to merge the banks; their philosophy is to leave the banks as stand alone charters because the cultures at each of the banks differ greatly.

Assistant Commissioner Entringer asked Mr. Strube about their intentions with regard to the trust assets at Scandia American Bank & Trust. Mr. Strube responded there are a limited number of trust accounts held at Scandia American Bank & Trust, and therefore it would be their goal to move those trusts into American Trust Center where they would be better served.

Assistant Commissioner Entringer noted that the pro formas included in the application all indicate the banks will remain well capitalized, and there will no negative impact to the bank holding company with the acquisition of this bank.

Assistant Commissioner Entringer noted that on November 2, 2004, the Federal Reserve notified United Bancor, Ltd., they had, under delegated authority, approved the acquisition of Scandia American Bancorporation, Inc., and indirectly Scandia American Bank & Trust, Stanley. Assistant Commissioner Entringer indicated it is the Department's recommendation to approve the application.

It was moved by Member Moldenhauer, seconded by Member Braseth, and carried by a vote of 5 to 0, with Members Daniel and Quale absent to approve the application by United Bancor, Ltd., Dickinson, to acquire control of Scandia American Bancorporation, Inc., Stanley.

DAKOTA COMMUNITY BANK, HEBRON – FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Board discussed the proposed changes from John Petrik, Attorney for Kirkwood Bank & Trust Co., Bismarck, as well as the response from Richard Olson, Attorney for Dakota Community Bank, Hebron.

Member Moldenhauer indicated that she did not realize the motion was to allow Dakota Community Bank to open its facility at 919 South 7th Street, Bismarck, on December 1, 2005; she thought the motion was for December 31, 2005. Member Braseth indicated he recalled that the motion was for December 1, 2005, because Dakota Community Bank would take control of the property eight months after the date Kirkwood Bank & Trust Co.'s lease expires.

Further discussion regarding the Order was held; however, because Members Daniel and Quale were absent from this meeting, it was decided to table approval of this Order until the December 14, 2004, special meeting.

AUTHORIZATION FOR NORTH DAKOTA STATE-CHARTERED BANKS TO INVEST IN MOUNTAIN PLAINS EQUITY GROUP, PURSUANT TO SECTION 6-03-47.2, NORTH DAKOTA CENTURY CODE

Assistant Commissioner Entringer reviewed his November 5, 2004, Memorandum, noting that the request for authorization had been brought before

the State Banking Board in May 2004 and was briefly discussed at that time. However, the question as to whether or not a state-chartered bank could invest in a limited partnership was referred to Assistant Attorney General Miller to review prior to that meeting. Assistant Commissioner Entringer indicated that he and Assistant Attorney General Miller concluded that a limited partnership was not authorized under Section 6-03-47.2, as it was determined that such an investment was neither an equity or debt instrument. As a result of that discussion, Mr. Donald Stearnhan, President of Mountain Plains Equity Group, Inc., was notified that it was not a permissible investment, and he responded with a July 21, 2004, request asking that the State Banking Board reconsider its decision and also provided additional information suggesting that such an investment is typically characterized as an equity investment. The Memorandum also provided background on Mountain Plains Equity Fund I L.P., which is a newly organized limited partnership formed for the sole purpose of investing in low income residential rental properties in the States of Montana, North Dakota, and Wyoming that qualify for tax credit. The general partner is Mountain Plains Equity Group, Inc., a Wyoming corporation. Portions of the private offering Memorandum were provided for the State Banking Board, in particular the Plan of Distribution-Investment Suitability Standards. The Board was provided a copy of Mr. Stearnhan's July 21, 2004, response to the Department's determination that North Dakota state-chartered banks could not invest in this as it was not eligible under statute. The Memorandum continues that upon further consideration, Assistant Attorney General Miller and Assistant Commissioner Entringer have done further research and concluded that a limited partnership would constitute equity and would qualify for investment by North Dakota state-chartered banks. Assistant Commissioner Entringer reviewed Section 6-03-47.2(2), North Dakota Century Code, for the Board, and concluded from the offering information it appears that the types of property fit the criteria of economic rehabilitation and development of low income areas.

Assistant Commissioner Entringer indicated it is the Department's recommendation this investment be authorized for North Dakota state-chartered banks.

Member Monson inquired as to whether this would qualify for CRA for larger banks, and Assistant Commissioner Entringer indicated it was his understanding it would.

It was moved by Member Braseth and seconded by Member Henke to authorize North Dakota state-chartered banks to invest in Mountain Plains

Equity Fund I, L.P. The motion carried by a vote of 5 to 0, with Members Daniel and Quale absent.

ITEMS TO BE NOTED

Federal Deposit Insurance Corporation

Corporate reorganization merger application involving Bank of the West, San Francisco, CA.

Federal Reserve System

Approved 10-15-04, BNP Paribas, Paris, France, and BancWest Corporation, Honolulu, Hawaii, to acquire Community First Bankshares, Inc., Fargo, North Dakota.

Comptroller of the Currency

Approved 9-22-04, U.S. Bank National Association to relocate its First Bank Fargo, West Office, from 2424 13th Avenue S., Fargo, to 3225 25th Street South, Fargo.

MEETING DATES FOR 2005

The proposed meeting dates for 2005 were approved: January 13, March 10, May 12, July 14, September 8, and November 10.

DEPARTMENT LEGISLATION

Chairman Karsky indicated he and Assistant Commissioner Entringer recently met with the North Dakota Bankers Association Legislative Committee. Chairman Karsky indicated on thing we would like to do, even though it will be difficult, is to increase the legal lending limit for banks. Chairman Karsky indicated at present we are looking at 25% of capital, stock, surplus, and undivided profits, which is quite an increase for some banks. Chairman Karsky indicated on thing he does want to change is that a personal guaranty will count against your individual lending limit immediately. Chairman Karsky also indicated that the rulemaking process will try to define when you have a borrower or an individual that has multiple corporations, at some point the loans to all the various corporations need to be capped and we are trying to figure out at which level those loans to the related interests should be capped.

After considerable discussion as to how the rules for the lending limit will be applied, the consensus was the Department should draft rules and send those out to the banks for their consideration before the rulemaking process begins.

The open session ended at 12:02 p.m., and the Board went into closed session at 12:08 p.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary